

March 22, 2004

Docket Management System
U.S Department of Transportation
400 7th Street S.W, Room Plaza 401
Washington, D.C 20590-0001

Re: Docket No. FAA-1998-4521 NPRM
National Air Tour Safety Standards

ABSTRACT

I have authored several comments to this NPRM, pointing out flaws in reasoning, statistics and the rulemaking process. At this time I feel it would be beneficial to bring together questions from all my comment thus far submitted. The following will be a short discussion and a list of the questions posed, but with no answers given by the FAA.

DISCUSSION

I would like to discuss some background information to make a comparison between the FAA and me. As pointed out in many of my comments, the FAA has used “estimated and false” statistics to satisfy a requirement to draft NRPM 4521. I’d like to compare what would happen to me if I used the same scenario when, as an FAA certificated A&P mechanic with Inspection Authorization, I make false entries into aircraft permanent records.

Depending on the severity of my actions, the FAA could:

- a. Send the PMI from my local FSDO to lecture me.
- b. Mail a letter of reprimand to me and place a copy in my file.
- c. Suspend my certificate for a period of time.
- d. Revoke my certificate permanently.
- e. Prosecute me; mandate either a fine or jail or both.

In my opinion, the FAA has just drafted NPRM 4521 using statistics that cannot be proven accurate and have skewed these statistics to show cause for this sweeping rule change that would, most likely, close down many small “sightseeing” operations.

My miniscule actions against the FAA would be:

- a. Submit comments to Docket in opposition to NPRM 4521.
- b. Testify before a congressional sub committee against segments of this NPRM.
- c.
- d.
- e.

Let me describe to the FAA what it is like to start a small business in General Aviation to sell rides so the public can experience what it was like to fly in an open cockpit biplane in the 1930's.

First, one has to find the proper airplane. In our case it was the 1929 New Standard D-25 biplane, capable of carrying 5 persons (4 passengers and the pilot). The following is a picture of what the airplanes looked like when they were found. As the FAA can readily see it would several years to make these airplanes airworthy for carrying passengers.



The company of which I am employed is unique in that the airplanes were partially restored by us. With the help of a friend, my son and I built the wings. Of course there are a few others in our industry, who have done the same with an old airplane, but finding craftsmen who specialize in this type of work is costly and the process can take years to complete. Purchase took place in 1990, restoration began 1995, the first airplane flew June 2000 and the second airplane flew March 2003. So the restoration of two rare New Standard biplanes (there are only 4 examples currently airworthy in the world) took 8 long years and much capital outlay. Fortunately for us, David Pepple, an FAA Inspector from Portland, Maine, with a passion for old airplanes was there for issuance of the permanent Airworthiness Certificates. Among the problems NPRM 4521 has created for us, and many others in the business is the simple fact that the value of these rare airplanes has diminished at least 60 percent because this dark cloud is hanging over the industry. This dark cloud was created when NPRM 4521, poorly researched and written, was posted. The next photo shows both airplanes as they appear today at Fantasy of Flight, Polk City, Florida. They have been impeccably restored and are maintained to the highest standards of safety. As the FAA would state, "a high level of safety." My son Rob owns these aircraft and the entire business. I am the pilot/mechanic.



It should be very apparent that we don't look like an airline, as the FAA would have folks believe. Ours is a truly unique business, an airplane that flies low and slow. Perhaps these airplanes could have been used for airline work back when they were first manufactured in 1929 and 1931, but at a cruising speed of a mere 75 mph and a windy open cockpit, they would hardly have been successful. However, a few were adapted to carry early Air Mail. The following pertains to operation under Part 119.1(e)(2).

UNANSWERED QUESTIONS TO THE FAA

Each of my docket comments contains questions for the FAA to ponder concerning NPRM 4521 and its implications on the "sightseeing" side of the industry. Keep in mind that I am talking about commercial "sightseeing" flights with an ATP or Commercial pilot in command, not private pilots conducting "sightseeing" rides under Part 91. Following are some of my concerns that I feel the FAA should answer:

FROM COMMENT #99, POSTED 11-14-03

- **QUESTION:** If the FAA does not know how many Part 91 "sightseeing" aircraft are flying under the Part 119.1(e)(2) exemption, then how can they possibly know how many hours these aircraft operate? What then would be the rate of Part 91 "sightseeing" accident/fatality ratio since the number of aircraft and the flight hours cannot be accessed?

- **QUESTION:** Since the FAA cannot provide accurate accident/fatality ratio based on flight hours, could it possibly be considerably lower than Part 135 operations?
- **QUESTION:** Does the FAA actually think the small Part 91/119.1(e)(2) operators can survive the cost of conversion to Part 135?

FROM COMMENT #849, POSTED 1-6-04

- **QUESTION:** FAA estimates that implementing the proposed rule would cost small Part 91 operators \$11,500 to \$75,000 depending on one or two pilot operations. How could any small operator of 1 or 2 aircraft possibly absorb this overwhelming cost?

FROM COMMENT #848, POSTED 1-7-04

- **QUESTION:** How can the FAA draft rules based on “estimates?” How can the FAA make rules that affect so many WITHOUT true and accurate facts?
- **QUESTION:** The GRA Study describes the fleet of aircraft used for “sightseeing.” Can anybody connected with the study tell me what happened to the “core” of vintage “sightseeing” biplanes, such as Travel Air 4000, Boeing Stearman PT-13/PT-17/N2S, Naval Air Factory N3N, New Standard D-25 and Waco Cabin that were left out of the study? However two Learjet 24’s were included!
- **QUESTION:** Is this the end of rides in historic vintage biplanes/monoplanes and WW2 bombers for those who CHOOSE to experience the thrill and nostalgia?

FROM COMMENT #1072, POSTED 1-12-04

- **QUESTION:** The letter from Senator Hillary Clinton dated August 16, 2001 calls for action from the FAA regarding “Air Tours” due to a Las Vegas helicopter crash near the Grand Canyon. Is this the true reason behind this proposed rule?
- **QUESTION:** The GRA Study states, “Although no estimate is available for number of such operators (Part 91), it is important to note that virtually any Private Pilot with an aircraft is able to provide on-demand sightseeing. Consequently, the potential number of operators is large.” Excuse me, but isn’t a commercial pilot certificate required when giving rides for hire?
- **QUESTION:** The NPRM states, “In addition, the FAA assumes that NO requests for exemptions will be granted, that performance penalties apply to all flights, and that additional paperwork will take additional time.” Is the interpretation of this statement that aircraft licensed in the Limited, Restricted and Experimental category can no longer give rides for hire using the letter of exception? Can these types of aircraft be certificated under Part 135?

FROM COMMENT #1423, POSTED 1-23-04

- **QUESTION:** Why were accidents resulting in fatalities with Private Pilots in command deliberately included to inflate the 75-accident/38-fatality total for Part 91/119.1(e)(2) sightseeing operations?
- **QUESTION:** What happened to the GRA Study, which was drafted in 1998 but apparently disappeared until 2003?
- **QUESTION:** Were there people within the FAA who knew that much of the information concerning Part 91 operators was “estimated, false or bogus?”
- **QUESTION:** Was there political pressure from a certain Senator in the State of New York? Did the FAA decide to “press on” and use this outdated and misleading study anyway?
- **QUESTION:** How does certificating this operation under Part 135 make maintenance issues any safer?
- **QUESTION:** How will the FAA handle certification under Part 135 for this particular airplane (a New Standard biplane) and other airplanes of the same vintage that are currently operating under Part 91/119.1(e)(2)?

FROM COMMENT #1512, POSTED 2-17-04

- **QUESTION:** If we must comply with Part 135 as a nonscheduled air carrier, can the FAA tell me how they intend to enforce compliance with Service Bulletins when the factory has not existed for over 70 years?
- **QUESTION:** Since the factory that manufactured my airplane closed in 1931, primary structural parts are manufactured in accordance with FAR Part 21.303a. With parts traceability an important issue, how does this work when certificating under Part 135?
- **QUESTION:** From the damaging NTSB Safety Recommendation dated August 20, 2003, “FAA’s response, in a letter received by the Safety Board on September 9, 1993, acknowledged that, although estimates of on-demand air taxi activity were of marginal quality, RESOURCES to complete an additional survey each were NOT AVAILABLE.” Sound familiar?
- **QUESTION:** From the same report, “No rulemaking resulted from the Board’s suggestion to include nonscheduled Part 135 operations in Traffic Reporting System, and the FAA continues to estimate that activity using the FAATA Survey.” Sound familiar?
- **QUESTION:** Is there a safety problem among Part 91/119.9(e)(2) operators?
- **QUESTION:** Is the largest safety problem among the nonscheduled Part 135 operators?
- **QUESTION:** Is the safety problem among nonscheduled Part 135 operators flying rotary wing aircraft?
- **QUESTION:** Is there a need to identify and register all current Part 91/119.1(e)(2) operators at the FSDO level and have them generate annual data regarding revenue flight hours?
- **QUESTION:** How many current Part 91/119.1(e)(2) operators are there in the industry? What type and how many aircraft do they operate?

- **QUESTION:** Are there enough FAA resources to bring all Part 91/119.1(e)(2) operators under current Part 135 if this NPRM passes? Could certification be completed in the proposed 180 days?
- **QUESTION:** The NTSB Safety recommendation states, “Based on the foregoing, the Safety Board concludes that the FAA should improve the methods it uses to estimate nonscheduled Part 135 activity, noting that a REVISION may not be considered an improvement unless it is validated against some known information.” What REVISION are they referring to, the National Air Tour Safety Standards REVISION?
- **QUESTION:** Will certificating under Part 135 make this airplane any safer? Is certification under Part 135 even possible?
- **QUESTION:** Will Part 135 be the end of the road for Part 91/119.1(e)(2) operators like us and an estimated 700 others?

FROM COMMENT #1534, POSTED 2-22-04

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- **QUESTION:** Can the FAA possibly imagine what a daunting task certification under Part 135 would bring when NPRM 4521 was drafted?
- **QUESTION:** The NTSB Safety Recommendation dated August 20, 2003 is based on the nonscheduled Part 135 operators. Where do Part 91/119.9(e)(2) operators fall in this recommendation?

FROM COMMENT #1710, POSTED 3-5-04

- **QUESTION:** Obviously the FAA is not capable of enforcing existing rules and regulations over the Part 135 nonscheduled operators. Now the FAA proposes to add an unknown number of Part 91 operators to this list. If the FAA can't enforce existing operators, how can adding an unknown number of “new” operators make things any safer?
- **QUESTION:** FAA's 1st response to the online forum states, “The FAA has many qualified inspectors. It sounds like a great job to me. There are organizations that do have qualified individuals and we have used them in the past. This issue can be solved.” How did the FAA use non-FAA personnel to issue Part 135 Certificates? Did they make these people “Designees?”
- **QUESTION:** Why was NPRM 4521 filed away for 5 years before it reappeared?
- **QUESTION:** Could this 5-year lapse have been used to convene an ARC or ARAC to study and advise on content and scope?
- **QUESTION:** Page 60583 of the NPRM states, “Part 91 commercial air tour operators experience more accidents than Part 135 operators but a higher proportion result from mechanical failure.” Where did you get that information?

FROM COMMENT #1854, POSTED 3-22-04

- **QUESTION:** Of the estimated 700 business that would close, the FAA's 1st Response states, “If there had been a database, we would have known been able to assess the impact more accurately.” Doesn't that statement prove what we all

have been saying, that the FAA has drafted NPRM 4521 with no factual and valid data?

- **QUESTION:** FAA's 3rd online forum response states, "When I say "vintage, it includes WWII and historic." What is the FAA's definition of "vintage?" What is the FAA's definition of "historic?"
- **QUESTION:** What happened to NPRM 4521 during the time it was drafted in 1998 to the posting in October 2003? Would not that have been a good opportunity to convene an ARC or ARAC and listen to industry to determine if 4521 WOULD or WOULD NOT work?
- **QUESTION:** FAA's 3rd online forum response states, "Should vintage airplanes operating well above your INDUSTRY AVERAGE be treated the same as those of you with drastically fewer hours and what should that time limit be? What is the FAA's definition of "INDUSTRY AVERAGE?"
- **QUESTION:** FAA's 2nd online response states, "All of these accidents are lumped into general aviation, which is a very broad term." If I can separate out the Part 91 "sightseeing" accidents where a Commercial or ATP is in command of the airplane, then why can the FAA not do this?
- **QUESTION:** Why does the FAA think there would be a 200-400 percent increase in an insurance policy if we had to convert to Part 135?
- **QUESTION:** Does the FAA think it should hire a consultant firm that could produce a factual report on data concerning Part 91/119.1(e)(2) operators?
- **QUESTION:** Does the FAA think it should remove all accidents/fatalities that are associated with Private Pilots and hot air balloons from the GRA 75 accident/38 fatality ratio?
- **QUESTION:** Does the FAA think that if they DID gain the facts they would find there IS NOT a significant problem with the Part 91.119.1(e)(2) operators?
- **QUESTION:** Does the FAA think the NTSB Safety Recommendation dated August 20, 2003 is completely focused on nonscheduled Part 135 on-demand operators and does not mention Part 91/119.1(e)(2) operators?
- **QUESTION:** How many fatalities included in 75/38 ratio presented in the NPRM resulted from accidents with a Private Pilot in command? Do you have any data?
- **QUESTION:** The FAA maintains that all Part 91 accidents are "lumped" together, thus a determination cannot be made by separating these accidents into categories. Would it not be more accurate to separate the accidents into categories?
- **QUESTION:** Regarding the Part 91, Subpart K Fractional Ownership issue, is not the 5 years (1998-2003) enough time to convene an ARC and have them act?

CONCLUSION

Having just attended an FAA IA Refresher course to renew my certificate, I listened to a presentation regarding FAA's new "Customer Service" program. I could not help but to think about the hard stand the FAA has made in NPRM 4521 with the use of "bogus" information, targeting many small operators in an attempt to force them out of business.

As of this writing, the FAA has apparently closed the public forum, leaving a number of FAA responses to questions posed on a blank screen. Will we have a chance to respond to the FAA responses? If the entire “public forum” is not promptly entered on the NPRM 4521 docket, then I believe the FAA is committing an unprofessional act. However, what else can one expect when the NPRM was drafted unprofessionally.

I have just a few other questions that the FAA can attempt to answer. However all I expect is silence. But I will list those questions anyway.

1. There is sparse data and it is inaccurate regarding the Part 91/119.1(e)(2) operators. DOES THE INACCURATE DATA JUSTIFY SUCH A SWEEPING REGULATION CHANGE THAT CAN FORCE 700+ SMALL BUSINESSES TO EXIT THE INDUSTRY?
2. The NTSB Safety Recommendation states, “50-60 percent of all commercial accidents are caused by nonscheduled Part 135 operators.” IS THAT THE GROUP THE FAA WANTED TO TARGET, BUT INSTEAD CAPTURED EVERYBODY?
3. The GRA study states, “Any Private Pilot can give sightseeing rides on-demand.” DOES NOT THE FACT THAT ACCIDENTS CAUSING FATALITIES BY PRIVATE PILOTS IN COMMAND OF THE AIRPLANE BEING LUMPED INTO THE “SIGHTSEEING” SEGMENT MAKE THE STUDY BOGUS?
4. Under current provisions of FAR Part 135, IS IT POSSIBLE TO CERTIFICATE IN PART 135 AN AIRPLANE ORIGINALLY BUILT IN 1929 PER AERONAUTICS BULLETIN 7A?
5. HOW DOES CERTIFICATING A 1929 AIRPLANE UNDER PART 135 MAKE MAINTENANCE ISSUES ANY SAFER THAN UNDER PART 91?



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